IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.08.2006

C O R A M

The Honourable Mrs. Justice PRABHA SRIDEVAN

Writ Petition No.22228 of 2006

V. Thenmozhi .. Petitioner

Versus

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai-9.

2. The Director of Medical Education,
Kilpauk, Chennai-10.

3. The Secretary,
Selection Committee (M.B.B.S.),
Kilpauk, Chennai-10. .. Respondents

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PRAYER : Writ Petition filed under Article 226 of the Constitution of India for a writ of declaration, declaring Clause 6(2) of the Prospectus meant for MBBS/BDS Courses for the year 2006-07 as arbitrary, illegal and not enforceable against the petitioner and further direct the respondents to admit the petitioner in the MBBS Course in the College according to the ranking assigned to the petitioner.
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For Petitioner : Mr. R. Muthukumarasamy, Senior Counsel
for Mr. Mr. S. Kamadevan
For Respondents : Mr. M. Sekar, Spl. Govt. Pleader (Edn.)
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O R D E R
The writ petitioner applied for admission to the M.B.B.S. Course, but the Prospectus for Admission to Medical Courses stipulates that the following categories of candidates are not eligible to apply to Medical/Dental Courses :
6(i) Candidates who have passed the H.Sc. in the Vocational Stream.
(ii) Candidates who are presently undergoing any of the professional courses such as M.B.B.S., B.D.S., B.Pharmacy, B.Sc. (Nursing), B.P. T., B.O.T., B.S.M.S., B.H.M.S., Engineering, Law, Agriculture, Veterinary etc. and those candidates who have discontinued on any grounds the professional courses mentioned, leading to a waste of seat.

As per this criterion, the petitioner is not eligible to apply. The petitioner had aspirations of becoming a Doctor and wrote the Entrance Examination in the year 2005. She did not get the cut-off marks prescribed

for the M.B.C. Quota, to which she belongs, so she was allotted the BDS Course. For some reason, the petitioner could not continue the course. On 18.10.2005, she made an application to discontinue the course. She again wrote the Entrance Examination in the year 20 06-07. According to the marks obtained in this examination, the petitioner was placed at Rank No.74 in the Open Category and at No.12 in the M.B.C. Category, but by invoking the above clause, the petitioner has been refused a seat in the M.B.B.S. Course. Therefore, the petitioner has filed this writ petition challenging Clause 6(2) of the Prospectus, for a declaration that it is arbitrary, illegal and not enforceable.

2. Mr. R. Muthukumarasamy, learned senior counsel for the petitioner submitted that, earlier, petitions had been filed for mandamus by students similarly placed, but they had not challenged the provision. According to the learned senior counsel, since the admission criteria have a direct impact on the standards of education, which falls under Entry 66 of List I, the State's power to legislate under Entry 25 of List III is subject to the power of the Union, and the State cannot adversely affect the standards laid down by the Union under Entry 66 of List I. For this purpose, the learned senior counsel relied on A.I.R. 1999 S.C. 2894 [Dr. PREETI SRIVASTAVA & ANOTHER VS. STATE OF MADHYA PRADESH & OTHERS]. The learned senior counsel submitted that if the petitioner is denied her seat because of the impugned rule, then a meritorious student would have been denied the right to pursue her Medical Course, and since denial of the seat to a meritorious student will result in lowering of standards, the rule in the Prospectus would indirectly affect the standards of education, which is solely within the scope of Entry 66 of List I. It was submitted that the clause is conditional and will render a student ineligible only if the discontinuance results in waste of seat, which means, if the petitioner's seat had been allotted to another student, then the petitioner will be eligible. The learned senior counsel also submitted that to absolutely bar a student forever from pursuing her studies merely because she discontinued her studies was too harsh a punishment.

3. Mr. M. Sekar, learned Special Government Pleader would submit that the petitioner knew very well about the rules in the Prospectus and therefore, when she applied for the Course, she tacitly acceded to those rules and she cannot now seek a declaration that the said clause in the Prospectus is illegal. Moreover, the learned Special Government Pleader submitted that an identical clause in the Prospectus was challenged in (2002) 6 S.C.C. 318 [MABEL VS. STATE OF HARYANA & OTHERS] and the Supreme Court held therein that though the said clause at times will operate harshly, as in the case of the petitioner, it is meant to ensure that a candidate who has already secured admission should not abandon the seat after commencement of that course so as to seek admission in another course, which is in public interest, for otherwise, it would result in the wastage of the seat in the course in which he had taken admission. Once the Supreme Court has held that the said clause is valid, this Court is bound by the said decision.

4. To this, the learned senior counsel appearing for the petitioner would counter that in the case relied on by the learned Special Government

Pleader, the power of the State to lay down such a rule in the Prospectus in view of Entry 66 of List I was not considered and was not raised before the Supreme Court and therefore, this question must be decided.

5. The power of the State to legislate in the field of education has come up for consideration in many cases decided by the Supreme Court. But initially, we will take up cases decided by this Court where the identical clause was the subject matter.

6. In Writ Appeal No.1480 of 2005 Etc. [J. VINOTH RAJ & OTHERS VS. STATE OF TAMIL NADU & OTHERS (dated 13.9.2005)], a Division Bench of this Court had occasion to consider the said clause. The appellants therein raised the contention that during the year 2004-2005, the condition was that - "the following categories of candidates are not eligible to apply for Medical and Dental Courses :
those candidates who have already joined in any of the Professional Courses such as M.B.B.S., B.D.S., B.Pharmacy, B.Sc. (Nursing), B.P.T., B.O.T., B.S.M.S., B.H.MS., Engineering, Law Agriculture, Veterinary etc. and discontinued the course on any grounds after six months",

and therefore, the condition regarding ineligibility has been suddenly changed, to the detriment of the students. But in that case, the Division Bench did not decide the question whether the policy decision was arbitrary, as can be seen from paragraph 8 of the judgment, which reads thus : "For the purpose of deciding the present case, it is not necessary to consider as to whether such policy decision of the Government is arbitrary and offends the provisions of the Constitution contained in Articles 14, 19 and 21, as in our opinion, even assuming such policy decision is a valid policy, such change of policy should not have been made applicable for admission to this year as the candidates depending upon the existing procedure had already discontinued their studies and thereafter on the basis of the Information Booklet issued by the Anna University had also appeared in the Common Entrance Examination after having discontinued their studies within the stipulated period of six months."

The Division Bench also held in favour of the students because of the sudden change of the policy which leaves the students in lurch, as such students can neither continue their studies nor join any professional course in any other University.

7. In Writ Petition No.21955 of 2005 Etc. [G. MOHAMMED NAWAZ VS. STATE OF TAMIL NADU & OTHERS (dated 22.7.2005)], the very same question has been considered. On behalf of the State, in that case, it was submitted that the impugned clause is intended to deny admission to those who discontinued their professional courses, leading to wastage of seats, since the Government is spending substantial public funds for every seat for the professional courses in Medicine and Dental, unlike in the Engineering Course. The learned single Judge upheld the impugned clause, but however directed the consideration of the applications of the petitioners subject to the verification whether their discontinuation of the earlier courses had in fact led to wastage of seats. So, these then are the two decisions of this Court

on identical issues.

8. In Dr. Preeti Srivasatava's case (supra), which was relied on by the petitioner, the question was whether it is open to the State to prescribe different admission criteria in the sense of prescribing different minimum qualifying marks for special category candidates seeking admission under the reserved seats category. Therefore, the Supreme Court considered the question whether for admission to the postgraduate medical courses, it is permissible to prescribe a lower minimum percentage of qualifying marks for reserved seats category, as compared to the General Category. The Supreme Court held that the criteria for admission is part of the standards of education and it would be wrong to say that the standards of education is not affected by admitting students with low qualifying marks or that the standards of education is affected only by those factors which come into play after the students are admitted. The Supreme Court also examined the scope of the power of the State to control admissions to post-graduate courses in Medicine :

"The legislative competence of the Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VII Schedule to the Constitution. In the VII Schedule as originally in force, Entry 11 of List II gave to the States an exclusive power to legislate on 'Education including universities subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III.' Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3.1.1976 as a result of the Constitution 42nd Amendment Act of 1976.

.....

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 77 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also co-ordination of such standards. A State has, therefore, the right to control education including technical education so long as the field is not occupied by any Union Legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject, it is also necessary to remember that from 1977, education including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254."

The Supreme Court rejected the contention that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the post-graduate medical courses, lay down qualifications in addition to those prescribed under Entry

66 of List I. This would be consistent with promoting higher standards for admission to higher educational courses. But any lowering of the norms laid down which have an adverse effect on the s tandards of education cannot be permitted.

9. In A.I.R. 1987 S.C. 400 [Dr. AMBESH KUMAR & OTHERS VS. PRINCIPAL, L.L.R.M. MEDICAL COLLEGE, MEERUT & OTHERS], the Supreme Court held that by the State Government laying down eligibility qualification, namely, the obtaining of certain minimum marks in the MBBS Examination by candidates, there is no encroachment upon the Regulations made under the Indian Medical Council Act, nor is there any infringement of the Union's power provided in Entry 66 of List I. The Supreme Court also was conscious of the fact that there may be other national interests such as promoting excellence at the highest level and providing the best talent in the country with the maximum available facilities, and any special provision must strike a reasonable balance between these diverse national interests.

10. Since the clause impugned in this writ petition would be relevant in cases which had resulted in wastage of seats, some observations made in some of the judgments may be relevant.

11. In Ambesh Kumar's case (supra), the Supreme Court observed thus :
"It is pertinent to mention in this connection that the number of seats allotted to each of the prescribed courses is on the basis of two seats per professor and there is a crying necessity in the State for more experts in various disciplines in Medicine and Surgery etc. It is incumbent on the State Government to see that all these seats earmarked for each of these disciplines or courses are filled up. It appears from Annexure-D to the petition in C.A. No.6119 of 1983 that quite a considerable number of seats in various disciplines were kept vacant as the applicants did not fulfill the eligibility qualification framed by the State Government by its aforesaid order and as a result, several Professors and Assistant Professors who are meant for imparting teaching in these disciplines were kept idle though a considerable fund had to be expended for meeting their emoluments. It is for the State to consider and to see that the seats are filled up in all the disciplines and they are not left vacant in spite of a large number of applicants applying for admission in the various disciplines and the State Government has to evolve such criteria of eligibility that all the seats in different M.D., M.S. degree and diploma courses are filled up."

In (2003) 11 S.C.C. 146 [SAURABH CHAUDRI & OTHERS VS. UNION OF INDIA & OTHERS], where the institutional reservation was challenged, the Supreme Court observed thus :
"The court while adjudicating upon the constitutionality of the provisions of the statute may notice all relevant facts whether existing or conceived.
This Court may therefore notice the following -
(i) The State runs the universities.
(ii) It has to spend a lot of money in imparting medical education to the students of the State.

(iii) Those who get admission in postgraduate courses are also required to be paid stipends. Reservation of some seats to a reasonable extent, thus, would not violate the equality clause.
..... "

In (2003) 9 S.C.C. 564 [STATE OF ANDHRA PRADESH VS. K. PURUSHOTHAM REDDY & OTHERS], the Supreme Court held as follows :
"In R. Chitralekha vs. State of Mysore [A.I.R. 1964 S.C. 1823], Subba Rao, J. categorically held that the question as regards the impact of Entry 66, List I and Entry 25, List III must be determined by reading the Central Act as well as the State Act conjointly. A State law providing for such standards having regard to Entry 66 of List I would be struck down as unconstitutional only in the event the same is found so heavy or devastating so as to wipe out or appreciably abridge the Central field and not otherwise. Once the powers and functions of the Council are found to be subject to the guidelines issued by UGC and the perspective plan prepared by it would be subject to its approval, the question of standard of education set up by the State Act cannot be said to be leading to wipe out or appreciably abridge the Central field."

In (1995) 4 S.C.C. 104 [STATE OF TAMIL NADU VS. ADHIYAMAN EDUCATIONAL & RESEARCH INSTITUTE], the Supreme Court in paragraph 41, held, inter alia, that when there are more applicants than available situation/seats, the State authority is not prevented from laying down high standards or qualifications than those laid down by the Centre or Central authority to shortlist the applicants. When the State Authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

12. The present Entry 25 in the Concurrent List reads as follows:
'Entry 25, List III : Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I : Vocational and technical training of labour.'

Entry 25 is subject, inter alia, to Entry 66 of List I is as follows :
'Entry 66, List I : Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.'

There is no dispute that Medical seats are far less than Engineering seats and the demand is very high and therefore, if the State takes note of that and introduces another eligibility criterion which does not in any way lower the standards of education, then such rule cannot be said to encroach upon the field occupied by Entry 66.

13. The State may introduce a criterion for admission under special circumstances. The circumstances under which the State can make laws in respect of matters covered by Entry 25 of List III were dealt with by the First Bench of this Court in W.P. Nos.18558 to 18560 of 2006 etc. batch [Minor S. Janani vs. State of Tamil Nadu] by order dated 6.7.2006. It was observed as follows :
"A State has, therefore, the right to control education including

medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education, because this is exclusively within the purview of the Union Government."

The Division Bench referred to the order dated 27.2.2006 passed in W.P. Nos.3951 of 2006 etc. [Minor Nishanth Ramesh vs. State of Tamil Nadu], wherein the Division Bench has held as follows :
"The use of the expression 'subject to' in Item 11 of List II of the Seventh Schedule clearly indicates that the legislation in respect of excluded matters cannot be undertaken by the State Legislature."

In that case, reliance was placed on Gujarat University vs. Krishna Ranganath Mudholkar [A.I.R. 1963 S.C. 703], which was a decision by a Constitution Bench rendered prior to the 42nd Amendment, when Entry 1 1 of List II was in existence and the Supreme Court had held therein that the validity of the State legislation would depend upon whether it prejudicially affects co-ordination and determination of standards, but not upon the existence of some definite Union legislation directed to achieve that purpose. In Dr. M. Sathiyapriya vs. The Secretary to Government, Health and Family Welfare Department, Chennai [(2005) 1 M.L.J. 378], wherein eligibility criteria for admission was increased from two years period of service in Primary Health Centre to three years by virtue of Clause 23. While upholding the validity of Clause 23, a Division Bench of this Court held that the Government is empowered to law down standards of eligibility for admission and it is a policy decision and such decision has to be fair, rational and reasonable and unless the policy decision is demonstrably capricious or arbitrary, it cannot be struck down. A learned single Judge of this Court in R. Indra vs. State of Tamil Nadu [1998 Writ L.R. 461], rejected the contention that the marks obtained in the entrance examination alone should be considered for admission. It was held that the State which was running various medical colleges is empowered to fix additional qualifications to consider the merit of the candidate.

14. Further, even as early as in Ambesh Kumar's case (supra), the Supreme Court had bemoaned the fact that Professors and Assistant Professors who have been engaged for teaching are kept idle because of vacant seats in various disciplines. If students who join, let us say B.D.S. Course, decide to abandon their seats after some time so that they could join M.B.B.S. Course, then all those seats would go vacant. Even in Dr. Preeti Srivastava's case (supra), the Supreme Court held that rules which are not inconsistent with or which do not adversely affect the standards of education could be made by the State. It is only the lowering of the norms which will have an adverse effect on the standards of education and that cannot be permitted. Therefore, the plea that the State had no power to lay down an eligibility criterion to short-list the applicants is rejected.

15. However, the impugned clause is not free from difficulty. In the Prospectus, the students are asked to fill up various forms and execute bonds

given in the Annexure, and the agreement bond in Appendix-V of the Prospectus reads as follows :

".....

(6) If the candidate leaves the said college before passing final examination without the previous permission of the Government in writing for any reasons, whatsoever, including illness or if he/she is discharged or dismissed for misconduct or if he/she otherwise fails to complete the internship under clause (2) or refuses to serve in accordance with clause (3) or resigns or is dismissed for misconduct from such service, before the completion of 5 years of service, then in any such event, he/she shall pay to the Governor, on demand and without demur such sum not exceeding Rs.25,000/- (Rupees twenty five thousand only) as the Government may direct. The decision of the Government under this clause as to the commission of breach as also to the amount of compensation payable in respect thereof, shall be final and binding on the candidate.

(7) Candidates who opt to leave the course within 30 days of joining the course of admission to other professional courses may do so. However, if they leave the course for joining medical courses elsewhere within the above said 30 days, they will be bound by the bond."

16. According to the impugned clause, three categories of candidates are not eligible to apply to Medical or Dental Courses. They are :

i) Candidates who have passed the H.Sc. in the Vocational Stream. This does not apply to the petitioner's case.

ii) Next, candidates who are presently undergoing any of the professional courses such as M.B.B.S., B.D.S., B.Pharmacy, B.Sc. (Nursing), B.P.T., B.O.T., B.S.M.S., B.H.M.S., Engineering, Law, Agriculture, Veterinary etc. This clause also does not apply to the petitioner.

iii) Those candidates who have discontinued on any grounds the professional courses mentioned, leading to the waste of a seat. This clause applies to the petitioner. She had also made an application for discontinuance of the course.

17. The petitioner had discontinued the course on 18.10.2005. She had joined the course on 18.8.2005. Therefore, within sixty days, she had discontinued the course. The agreement bond that the petitioner was required to execute when she joined the B.D.S. Course allowed her to leave the course within 30 days of joining, as seen from Clause 7 of Appendix-V of the Prospectus, extracted above, subject to the conditions of the bond, which only requires a payment of Rs.2 5,000/-, as seen from Clause 6 above. But, the impugned Clause 6(ii) in the Prospectus does not indicate that the disqualification would arise only in respect of candidates who have discontinued the course after 30 days. More importantly, as held by th is Court in the unreported judgments which have been dealt with above, the third category of candidates would be ineligible only if their discontinuance had resulted in waste of seats. It is not an absolute bar. So, unless the respondents show that the petitioner, by discontinuing her course, had caused wastage of a seat, she is eligible to apply. It is also to be noted that when the petitioner applied for the course, she cannot know that because of her discontinuance of the earlier professional course, there has been wastage of a

seat. It is only when her application for subsequent course is scrutinized that the authorities, on verification, may be able to ascertain whether because she discontinued the course midstream, the seat allotted to her was wasted or whether some other student has been allotted the seat. But, the manner in which the Prospectus

clause is worded shows that the candidates are not eligible to apply, which indicates that they are shut out even at the threshold.
18. The impugned clause is unreasonable and there are inherent contradictions in the Prospectus. If the State feels in the circumstances mentioned above that there should not be wastage of seats, it may formulate rules to discourage it. The Mabel's case (supra) may not apply to the petitioner herein. The clauses in question before the Supreme Court are entirely different and though the Supreme Court in that case has also considered the question of wastage of seats, the clause in question which was before the Supreme Court was similar to the second category of Clause 6(ii) of the Prospectus in the present case, whereas, the petitioner belongs to the third category. It has already been pointed that the bond is contrary to the clause. Further, the language of this clause would indicate that the disqualification would occur only if the discontinuance results in the wastage of a seat, and wastage of seat is a question of fact that will have to be decided in each individual case. It is in these circumstances that in the unreported judgments of this Court, both the learned single Judge and the Division Bench, have directed the consideration of the applications of the students, subject to verification whether the discontinuance of the earlier courses had in fact led to wastage of seats.

19. There may be many reasons why the petitioner was unable to pursue her course. For example, a student may have suffered a serious accident. Even then, the clause prevents the student from joining any of the courses in this State for life, which is totally unreasonable and arbitrary. Even a student who has been rusticated for misconduct is sometimes permitted to resume the course, after one or more academic years, whereas the student who is not guilty of any misconduct is condemned forever. The respondents have to show a rational nexus between the object they seek to achieve and the eligibility criteria that they introduce. The impugned clause is vague and unclear and is contrary to the bond that the student has to execute. Even in Mabel's case (supra), the severity of the absolute bar has been diluted by fixing a time limit during which the student cannot apply. Paragraphs 4 and 5 of that judgment are extracted below :
"It will be useful to refer to clause 18 which reads as under -
'18. The candidates already admitted in any medical/dental colleges will not be considered eligible for admission to the course.'

A plain reading of the aforementioned clause shows that a candidate who was already admitted in a medical or dental college would be ineligible for admission in the other course. The said clause at times will operate harshly as in the case of the petitioner but it is meant to ensure that a candidate who has already secured admission should not abandon the studies after the commencement of that course to seek admission in another course which is in public interest, for otherwise it would result in the wastage of

the seat in the course in which he has taken admission, and further, such a change would deprive another eligible candidate from seeking admission to the other course. Obviously, the intention of the authority concerned in framing clause 18 appears to be to ensure that a candidate who has already secured admission with his free will in any course (MBBS or BDS) should complete that course and should not change his mind in midstream. It, therefore, follows that the bar is intended to be operative during the period of the course in which a candidate has taken admission. After completing that course or in the event of abandoning the course (MBBS/BDS) and not studying for the normal period (4/5 years, as the case may be) the candidate would become eligible after the end of such period of the course to seek admission in the course of his choice provided other conditions of admission are satisfied. In other words, the bar under clause 18 in this case will cease after the BDS course for the academic year 2000-01, in which the petitioner has taken admission comes to an end after 5 years. In the light of the above observations the petitioner will be free to seek admission in the course of her choice after the end of the BDS course which commenced in 2000-01."

Of course, Clause 18 that came up for consideration before the Supreme Court in that case is different from Clause 6(ii) in the present case. As stated earlier, three categories of students are held to be ineligible to apply. The petitioner comes under the third category of students who have discontinued on any ground, the professional courses mentioned. She will be ineligible only if by discontinuing the course, a seat has been wasted and not otherwise. The clause is ambiguous, not happily worded. If the State feels that wastage of seats should be discouraged, it must frame the clause more clearly, the State may also consider providing for condonation in cases where the discontinuance was owing to circumstances which were beyond the control of the student, for example, accident, pregnancy etc. The direction in Mabel's case [(2002) 6 S.C.C. 318] (supra) may also be useful while re-wording the clause. The respondents shall examine all these aspects. In any event, Rule 6(ii) of the Prospectus, as it stands with regard to the third category, is not clear, unreasonable, and the Bond which the students are asked to execute at the time of their admission does not appear to be in line with this clause.

20. For all these reasons, the writ petition is disposed of and the respondents are directed to consider the petitioner's eligibility for selection as per her ranking, subject to the verification whether there was wastage of a seat because of the petitioner's discontinuing the course. This order is passed since a seat has been kept vacant pursuant to the interim order of this Court, pending the writ petition. No costs. Consequently, M.P. No.1 of 2006 is closed.

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To

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai-9.

2. The Director of Medical Education,
Kilpauk, Chennai-10.

3. The Secretary,
Selection Committee (M.B.B.S.),
Kilpauk, Chennai-10.